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AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
BITTORRENT, INC.

FILED
in the office of the Secretary of State
of the State of California

DEC 15 2008

Eric Klinker and Mitchell Edwards hereby certify that:

1. They are President and Secretary, respectively, of BitTorrent, Inc., a California corporation.

2. The Amended and Restated Articles of Incorporation of this Corporation are hereby amended and restated to read as follows:

I.

The name of this Corporation is BitTorrent, Inc. (this "*Corporation*").

II.

The purpose of this Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

A. Classes of Stock. This Corporation is authorized to issue two classes of stock to be designated, respectively, "*Common Stock*" and "*Preferred Stock*." The total number of shares that this Corporation is authorized to issue is 195,166,872 shares. The total number of shares of Common Stock is 120,000,000 shares. The total number of shares of Preferred Stock is 75,166,872 shares, two million six hundred seventy-two thousand two hundred thirty-four (2,672,234) of which are designated as "*Series A Preferred Stock*", four million (4,000,000) shares of which are designated as "*Series B Preferred Stock*", five million nine hundred thousand (5,900,000) shares of which are designated as "*Series C Preferred Stock*", 26,000,000 of which are designated as "*Series C-1 Preferred Stock*" and 36,594,638 of which are designated as "*Series C-2 Preferred Stock*."

B. Rights, Preferences and Restrictions of Preferred Stock. The Preferred Stock authorized by these Amended and Restated Articles of Incorporation may be issued from time to time in one or more series. The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock, the Series B Preferred Stock, Series C Preferred Stock, Series C-1 Preferred Stock and Series C-2 Preferred Stock are as set forth below in this Article III, Section B.

1. Dividend Provisions.

1.1 The holders of shares of Preferred Stock shall be entitled to

receive dividends out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this Corporation) on the Common Stock of this Corporation, at the rate of six percent (6%) per annum of the Original Series A Issue Price (defined below) for shares of Series A Preferred Stock, the Original Series B Issue Price (as defined below) for shares of Series B Preferred Stock, the Original Series C Issue Price (as defined below) for shares of Series C Preferred Stock, the Original Series C-1 Issue Price (as defined below) for shares of Series C-1 Preferred Stock and the Original Series C-2 Issue Price (as defined below) for shares of Series C-2 Preferred Stock, respectively (in each case, as adjusted for any stock splits, stock dividends, combinations, recapitalizations or the like with respect to a series of Preferred Stock (collectively, a "***Preferred Stock Event***")), payable pro rata, on an equal priority, pari passu basis when, as, and if declared by the Board of Directors. Such dividends shall not be cumulative. Any partial payment shall be made ratably among the holders of Preferred Stock in proportion to the payment each such holder would receive if the full amount of such dividends were paid.

1.2 After payment of any dividends pursuant to Section 1.1, any additional dividends shall be distributed among all holders of Common Stock and all holders of Preferred Stock in proportion to the number of shares of Common Stock which would be held by each such holder if all shares of Preferred Stock were converted to Common Stock at the then effective conversion rate for the Preferred Stock.

1.3 Whenever a payment of dividends pursuant to Section 1.1 shall be payable in property other than cash, the value of such distribution shall be deemed to be the fair market value of such property as determined in good faith by the Corporation's Board of Directors.

1.4 As authorized by Section 402.5(c) of the California Corporations Code, Sections 502 and 503 of the California Corporations Code shall not apply with respect to payments made by this Corporation in connection with (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of this Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase at the original price, or (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of this Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such rights.

2. Liquidation Preference.

2.1 In the event of any liquidation, dissolution or winding up of this Corporation, either voluntary or involuntary:

(a) the holders of shares of Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the Aggregate Liquidation Consideration (as defined in Section 2.3(b) below) to the holders of Common Stock by reason of their ownership thereof, an amount per share of Series A Preferred Stock equal to \$4.79 (the

"Original Series A Issue Price"), an amount per share of Series B Preferred Stock equal to \$6.5695 (the **"Original Series B Issue Price"**), an amount per share of Series C Preferred Stock equal to \$7.29 (the **"Original Series C Issue Price"**), an amount per share of Series C-1 Preferred Stock equal to \$0.3217877 (the **"Original Series C-1 Issue Price"**) and an amount per share of Series C-2 Preferred Stock equal to \$0.4196574946522 (the **"Original Series C-2 Issue Price,"** and together with the Original Series A Issue Price, the Original Series B Issue Price, the Original Series C Issue Price and the Original Series C-1 Issue Price, the **"Original Issue Price"**), plus all declared but unpaid dividends on such share (subject to adjustment for Preferred Stock Events).

(b) Upon completion of any distributions required by Section 2.1(a), all of the remaining Aggregate Liquidation Consideration available for distribution to shareholders shall be distributed among the holders of Common Stock and Preferred Stock pro rata according to the number of shares of Common Stock held by such holders, (where, for this purpose, holders of shares of Preferred Stock will be deemed to hold (in lieu of their Preferred Stock) the greatest whole number of shares of Common Stock then issuable upon conversion in full of such shares of such Preferred Stock pursuant to Section 4).

2.2 If upon the occurrence of a liquidation, dissolution or winding up of this Corporation, the Aggregate Liquidation Consideration thus distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amounts set forth in Section 2.1(a), then the entire Aggregate Liquidation Consideration shall be distributed ratably among the holders of the Preferred Stock in proportion to the full preferential amount each such holder is otherwise entitled to receive under Section 2.1(a).

2.3 (a) For purposes of this Section 2 a liquidation, dissolution or winding up of this Corporation shall be deemed to be occasioned by, or to include (unless the holders of a majority of the voting power of the Preferred Stock then outstanding (determined on an as-converted basis) shall determine otherwise), (A) any reorganization, merger, consolidation or other similar transaction or series of related transactions (but excluding any reorganization, merger or consolidation effected exclusively for the purposes of a consolidation with a wholly-owned subsidiary of the Corporation or a change in the domicile of the Corporation) in which the Corporation's shareholders of record as constituted immediately prior to such transaction or series of related transactions will, immediately after such transaction or series of related transactions (by virtue of securities held by them immediately prior to such transaction or series of related transactions) fail to hold a majority of the voting power of the resulting or surviving corporation (or other entity) immediately following such transaction or series of related transactions (an **"Acquisition"**); or (B) a sale, lease, transfer or other disposition, in a single transaction or series of related transactions, of all or substantially all of the assets of this Corporation (an **"Asset Sale"**); provided, however, that a sale of securities by the Corporation primarily for capital raising purposes shall not be deemed to be a liquidation, dissolution or winding up of this Corporation.

(b) For the purposes of this Section 2, the **"Aggregate Liquidation Consideration"** shall be the aggregate amount legally payable, distributable or

otherwise deliverable to the holders of outstanding shares of the Corporation in any liquidation, dissolution or winding up of this Corporation (including, without limitation, any event as described in Section 2.3(a) above) as determined in accordance with Section 2.3(c) below.

(c) In any of such events described in Section 2.3(a) above, if some or all of the consideration received by this Corporation is other than cash, its value will be deemed its fair market value as mutually determined in good faith by the Board of Directors of this Corporation and the holders of a majority of the voting power of the Preferred Stock (determined on an as-converted basis). Any securities shall be valued as follows:

(i) The value of securities not subject to investment letter or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be:

(1) if traded on a securities exchange or a national quotation system, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) day period (or portion thereof) ending three (3) days prior to the closing;

(2) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) day period (or portion thereof) ending three (3) days prior to the closing; and

(3) if there is no active public market, the value shall be the fair market value thereof, as mutually determined in good faith by the Board of Directors of this Corporation and the holders of a majority of the voting power of the Preferred Stock (determined on an as-converted basis).

(ii) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the value determined as above in Section 2.3(c)(i) to reflect the approximate fair market value thereof, as mutually determined in good faith by the Board of Directors of this Corporation and the holders of a majority of the voting power of the Preferred Stock (determined on an as-converted basis).

(d) This Corporation shall give each holder of record of Preferred Stock written notice of such impending transaction not later than twenty (20) days prior to the shareholders' meeting called to approve such transaction or twenty (20) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction, and this Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than twenty (20) days after this Corporation has given the first notice provided for herein or sooner than ten (10) days after this Corporation has given notice of any material changes provided for herein; provided, however, that, except as may otherwise be required by law, such periods may be shortened and any other provisions of this Section 2.3(d) may be waived (either

prospectively or retroactively) with the written consent of holders of a majority of the voting power of the Preferred Stock (determined on an as converted basis).

3. Redemption. Neither the Corporation nor the holders of Preferred Stock shall have the unilateral right to call or redeem or cause to have called or redeemed any shares of the Preferred Stock.

4. Conversion. The holders of the Preferred Stock shall have conversion rights as follows (the “**Conversion Rights**”):

4.1 Right to Convert. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of this Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price by the applicable conversion price for such share, determined as hereafter provided, in effect on the date the certificate is surrendered for conversion (the “**Conversion Price**”); provided, however, that each share of Series C-2 Preferred Stock shall initially be convertible into a number of shares of Common Stock that is determined by dividing \$0.3217877 by the then applicable Conversion Price for the Series C-1 Preferred Stock. The initial Conversion Price per share for shares of Series A Preferred Stock shall be the Original Series A Issue Price, the initial Conversion Price for the Series B Preferred Stock shall be the Original Series B Issue Price, the initial Conversion Price for the Series C Preferred Stock shall be the Original Series C Issue Price, the initial Conversion Price for the Series C-1 Preferred Stock shall be the Original Series C-1 Issue Price and the initial Conversion Price for the Series C-2 Preferred Stock shall be \$0.3217877; provided, however, that such Conversion Prices shall be subject to adjustment as set forth in Section 4.4

4.2 Automatic Conversion. Each outstanding share of Preferred Stock shall automatically be converted immediately into fully paid and nonassessable shares of Common Stock at the applicable Conversion Price then in effect for such share upon the earlier of (i) except as provided in Section 4.3, this Corporation’s sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement under the Securities Act of 1933, as amended (the “**Act**”) for not less than \$50 million (before deduction of underwriter commissions and expenses) or (ii) the date and time specified by written consent or agreement of the holders of a majority of the voting power of the then-outstanding shares of Preferred Stock (determined on an as converted basis), voting together as a single class.

4.3 Mechanics of Conversion. Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, he, she or it shall surrender the certificate or certificates therefor, duly endorsed, at the office of this Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to this Corporation at its principal corporate office, of the election to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued. This Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled

as aforesaid and a check payable to the holder in the amount of any cash amounts payable as the result of a conversion into fractional shares of Common Stock, plus any declared and unpaid dividends on the converted Preferred Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock as of such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Act or a merger, sale, financing, or liquidation of the Corporation or other event, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering or the closing of such transaction or upon the occurrence of such event, in which event the persons entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities or transaction or the occurrence of such event.

4.4 Conversion Price Adjustments of Preferred Stock.

(a) The Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i) If this Corporation shall issue, after the date upon which any shares of Series C-1 Preferred Stock were first issued and sold to investors (the "**Purchase Date**"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the applicable Conversion Price of a series of Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series of Preferred Stock in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this Section 4.4(a)) be adjusted to a price determined by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding (which shall be deemed, for purposes of this Section 4.4(a), to include all shares of Common Stock directly or indirectly issuable upon conversion or exercise of all outstanding shares of Preferred Stock and options to acquire shares of capital stock of the Corporation, without regard to vesting or other conditions to exchange or convert) as of immediately prior to the issuance of such Additional Stock (the "**Aggregate Shares Number**") plus the number of shares of Common Stock that the aggregate consideration received by this Corporation for such issuance would purchase at such Conversion Price; and the denominator of which shall be the Aggregate Shares Number plus the number of shares of such Additional Stock.

(ii) No adjustment of the Conversion Price for a series of Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. No adjustment of such Conversion Price pursuant to this Section 4.4(a)(ii) shall have

the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(iii) In the case of the issuance of Additional Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(iv) In the case of the issuance of the Additional Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair value thereof as determined in good faith by the Board of Directors.

(v) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for all purposes of this Section 4.4(a) and Section 4.4(b):

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including, without limitation, the passage of time) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in Sections 4.4(a)(iii) and 4.4(a)(iv)), if any, received by this Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time) for any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this Corporation upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in Sections 4.4(a)(iii) and 4.4(a)(iv)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, including, but not limited to, a change resulting from the antidilution provisions thereof, the Conversion Price of each series of Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to

reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of each series of Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Common Stock deemed issued and the consideration deemed paid therefor pursuant to Sections 4.4(a)(v)(1) and 4.4(a)(v)(2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either Sections 4.4(a)(v)(3) or 4.4(a)(v)(4).

(b) “**Additional Stock**” shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to Section 4.4(a)(v)) by this Corporation after the Purchase Date other than:

(i) shares of Common Stock issued pursuant to a transaction described in Section 4.4(c) hereof;

(ii) shares of Common Stock issued or deemed issued to employees, consultants, officers, directors or vendors (if in transactions with primarily non-financing purposes) of this Corporation directly or pursuant to a stock option plan or restricted stock purchase plan, so long as the sum of the number of such shares of Common Stock issued or deemed to have been issued directly after the applicable Purchase Date and the number of shares of Common Stock issued or deemed to have been issued pursuant to all such stock option plans or restricted stock purchase plans (whether issued or deemed to have been issued before or after the Purchase Date), does not exceed an aggregate of 40,667,535 shares (appropriately adjusted for stock splits, combinations, stock dividends, recapitalizations and similar events and not including shares subject to options that expire unexercised and not including shares repurchased at cost by the Corporation in connection with the termination of employment or other provision of services to the Corporation) or such greater number of shares approved by at least seventy-five percent (75%) of the then-current members of the Board of Directors of this Corporation;

(iii) shares of Common Stock issued or issuable in a bona fide, firmly underwritten public offering under the Act before which or in connection with which all outstanding shares of Preferred Stock are converted to Common Stock;

(iv) shares of Common Stock issued pursuant to the conversion or exercise of convertible or exercisable securities outstanding as of the date hereof or subsequently issued pursuant to exceptions from the definition of “**Additional Stock**” under

this Section 4.4(b);

(v) shares of Common Stock issued or issuable: (i) in connection with a bona fide business acquisition by this Corporation, whether by merger, consolidation, sale of assets, sale or exchange of stock or otherwise as approved by the Board of Directors of this Corporation, including at least sixty percent (60%) of the then-current members of the Board of Directors of this Corporation, provided such issuances are for other than primarily equity financing purposes;

(vi) shares of Common Stock issued or issuable in connection with any equipment lease financing or bank credit arrangement, provided such issuances are for other than primarily equity financing purposes and approved by at least seventy-five percent (75%) of the then-current members of the Board of Directors of this Corporation;

(vii) shares of Common Stock issued or issuable upon conversion of any shares of Series C-2 Preferred Stock; or

(viii) shares of Common Stock issued or issuable in connection with any transaction where such securities so issued are expressly excepted from the definition "*Additional Stock*" and the application of price-based anti-dilution adjustments by written consent of the holders of a majority of the voting power of the outstanding shares of Preferred Stock (determined on an as converted basis).

(c) In the event this Corporation should at any time or from time to time after the Purchase Date fix a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "*Common Stock Equivalents*") without payment of any consideration by such holder for the additional shares of Common Stock or the Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend distribution, split or subdivision if no record date is fixed), the Conversion Price of each series of Preferred Stock shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding and those issuable with respect to such Common Stock Equivalents.

(d) If the number of shares of Common Stock outstanding at any time after the Purchase Date is decreased by a combination of the outstanding shares of Common Stock, then, following the record date of such combination, the Conversion Price for each series of Preferred Stock shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding.

4.5 Other Distributions. In the event this Corporation shall declare

a distribution payable in securities of other persons, evidences of indebtedness issued by this Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4.4(c), then, in each such case for the purpose of this Section 4.5, the holders of each series of Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of this Corporation into which their shares of such series of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock of this Corporation entitled to receive such distribution.

4.6 Recapitalizations. If at any time or from time to time the Common Stock issuable upon conversion of the Preferred Stock is changed into the same or a different number of shares of any other class or classes of stock, whether by way of recapitalization, reclassification, exchange, substitution or otherwise (a "**Recapitalization**") (other than a subdivision, combination or merger or sale of assets transaction provided for elsewhere in Section 2 or this Section 4) provision shall be made so that the holders of each series of the Preferred Stock shall thereafter be entitled to receive upon conversion of their shares of such series of Preferred Stock the number of shares of stock or other securities or property of this Corporation or otherwise, to which a holder of the number of shares of Common Stock deliverable upon conversion of the Preferred Stock held by such holder would have been entitled on such Recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of each series of Preferred Stock after the Recapitalization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of each such series of Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

4.7 No Impairment. This Corporation will not, by amendment of these Amended and Restated Articles of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by this Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment. Notwithstanding the foregoing, this Section 4.7 shall not prohibit the Corporation from amending these Amended and Restated Articles of Incorporation with requisite approval by the Corporation's Board of Directors and shareholders.

4.8 No Fractional Shares and Certificate as to Adjustments.

(a) No fractional shares shall be issued upon the conversion of any share or shares of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined in good faith by the Board of Directors. The number of shares of Common Stock to be issued upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time

converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion.

(b) Upon the occurrence of each adjustment or readjustment of the Conversion Price of any series of Preferred Stock pursuant to this Section 4, this Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. This Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (A) such adjustment and readjustment, (B) the Conversion Price for such series of Preferred Stock at the time in effect, and (C) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the conversion of a share of such series of Preferred Stock.

4.9 Notices of Record Date. In the event of any taking by this Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, this Corporation shall mail to each holder of Preferred Stock, at least twenty (20) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or right, and the amount and character of such dividend, distribution or right; provided, however, that the application of this Section 4.9 may be waived with the written consent of the holders of a majority of the then outstanding shares of Preferred Stock.

4.10 Reservation of Stock Issuable Upon Conversion. This Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, this Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite shareholder approval of any necessary amendment to these Amended and Restated Articles of Incorporation.

4.11 Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, or if delivered by an express courier service and addressed to each holder of record at his address appearing on the books of this Corporation.

5. Voting Rights.

5.1 General. The holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such share of Preferred Stock could then be converted. With respect to such vote and except as otherwise expressly provided herein or as required by applicable law, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any shareholders meeting in accordance with the Bylaws of this Corporation, and shall be entitled to vote, together with holders of Common Stock as a single class, with respect to any matter upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

5.2 Election of Directors.

(a) So long as at least one million (1,000,000) shares of Series A Preferred Stock are outstanding, as adjusted for any applicable Preferred Stock Events, the holders of shares of Series A Preferred Stock shall be entitled, voting separately as a single class, to elect one (1) director of the Corporation (the "**Series A Director**") at or pursuant to each meeting or consent of the Corporation's shareholders for the election of directors, to remove from office such director, to fill any vacancy caused by the resignation or death of such director and to fill any vacancy (by unanimous consent if done in writing, or by majority vote otherwise) caused by the removal of such director; provided, however, that the foregoing provisions of this Section 5.2(a) shall automatically terminate on the Purchase Date.

(b) So long as at least one million (1,000,000) shares of Series B Preferred Stock are outstanding, as adjusted for any applicable Preferred Stock Events, the holders of shares of Series B Preferred Stock shall be entitled, voting separately as a single class, to elect one (1) director of the Corporation (the "**Series B Director**") at or pursuant to each meeting or consent of the Corporation's shareholders for the election of directors, to remove from office such director, to fill any vacancy caused by the resignation or death of such director and to fill any vacancy (by unanimous consent if done in writing, or by majority vote otherwise) caused by the removal of such director; provided, however, that the foregoing provisions of this Section 5.2(b) shall automatically terminate on the Purchase Date.

(c) The holders of shares of Preferred Stock shall be entitled, voting together as a single class to elect one (1) director of the Corporation (the "**Preferred Director**") at or pursuant to each meeting or consent of the Corporation's shareholders for the election of directors, to remove from office such director, to fill any vacancy caused by the resignation or death of such director and to fill any vacancy (by unanimous consent if done in writing, or by majority vote otherwise) caused by the removal of such director; provided, however, that the foregoing number of directors set forth in this Section 5.2(c) shall automatically increase from one (1) to three (3) on the Purchase Date.

(d) The holders of shares of Common Stock shall be entitled, voting separately as a single class, to elect three (3) directors of the Corporation at or pursuant to each meeting or consent of the Corporation's shareholders for the election of directors, and to

remove from office such directors, to fill any vacancy caused by the resignation or death of such directors and to fill any vacancy (by unanimous consent if done in writing, or by majority vote otherwise) caused by the removal of any such directors; provided, however, that the foregoing number of directors set forth in this Section 5.2(d) shall automatically decrease from three (3) to two (2) on the Purchase Date.

(e) The holders of shares of Common Stock and Preferred Stock shall be entitled, voting together in accordance with Section 5.1 hereof, to elect all other remaining directors of the Corporation at or pursuant to each meeting or consent of the Corporation's shareholders for the election of directors, to remove from office such director, to fill any vacancy caused by the resignation or death of such director and to fill any vacancy (by unanimous consent if done in writing, or by majority vote otherwise) caused by the removal of any such director.

6. Protective Provisions.

6.1 In addition to any other vote required by law, so long as at least five hundred thousand (500,000) shares of Preferred Stock are outstanding (as adjusted for any applicable Preferred Stock Events), this Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at a majority of the then outstanding shares of Preferred Stock voting separately as a single class on an as-converted basis:

(a) alter or change, whether by article amendment, merger, consolidation, recapitalization, reclassification or otherwise, the rights, preferences or privileges of the shares of Preferred Stock so as to affect adversely the Preferred Stock;

(b) authorize or issue, or obligate itself to issue, whether by merger, consolidation or otherwise, any equity security, including any other security convertible into or exercisable for any equity security, having rights, preferences or privileges senior to, or being on a parity with, any of the rights, preferences or privileges of any series of the Preferred Stock;

(c) pay dividends or make other distributions on any class or series of the capital stock of the Corporation;

(d) effect any transaction described in Section 2.3(a);

(e) agree to consummate (A) any acquisition by this Corporation of another entity by means of any reorganization, merger or consolidation (but excluding any reorganization, merger or consolidation effected exclusively for the purpose of a consolidation with a wholly-owned subsidiary of the Corporation or the change in domicile of the Corporation); or (B) the acquisition by this Corporation of all or substantially all of the assets of another entity, in each case so long as the aggregate amount payable, distributable or otherwise deliverable to the shareholders of the acquired entity (including the value of this Corporation's securities deliverable to the shareholders of the acquired entity determined in accordance with Section 2.3 or to the entity (or its shareholders) from whom the assets were

acquired (the "***Consideration Paid***") is in excess of two million dollars (\$2,000,000); provided, however, that notwithstanding the foregoing, such transaction shall require the consent of the holders of a majority of the then outstanding shares of Preferred Stock pursuant to this Section 6.1(e) if the Consideration Paid is less than two million dollars (\$2,000,000) unless such transaction has been approved by the Board of Directors of the Corporation, including at least sixty percent (60%) of the then-current members of the Board of Directors of this Corporation;

(f) change the authorized number of members of the Board of Directors of the Corporation from seven (7), unless such change has been approved by at least seventy-five percent (75%) of the then-current members of the Board of Directors of this Corporation;

(g) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares of Common Stock from shareholders pursuant to the Corporation's right of first refusal or from employees, officers, directors, consultants or other persons performing services for this Corporation or any subsidiary pursuant to agreements approved by at least seventy-five percent (75%) of the then-current members of the Board of Directors of this Corporation, under which this Corporation has the option to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment or other provision of services to the Corporation;

(h) amend, alter or change, whether by merger, consolidation or otherwise, any provision of these Amended and Restated Articles of Incorporation or Bylaws of the Corporation;

(i) increase the number of shares authorized for issuance under any existing stock or option plan or create any new stock or option plan; or

(j) increase or decrease the number of authorized shares of Common Stock or Preferred Stock.

Notwithstanding the foregoing, nothing in this Section 6 shall be deemed to modify, alter or change the rights of holders of any series of Preferred Stock set forth in Sections 903(a) and 903(b) of the California Corporations Code, as it may be amended from time to time hereafter.

7. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 4, or otherwise redeemed or purchased by the Corporation, the shares so converted, redeemed or purchased shall be cancelled, retired and eliminated from the shares which the Corporation shall be authorized to issue and shall not thereafter be issuable by this Corporation. These Amended and Restated Articles of Incorporation shall be appropriately amended to effect the corresponding reduction in this Corporation's authorized capital stock.

8. No Further Issuance of Series A, Series B or Series C Preferred Stock. Following the Purchase Date, the Corporation shall not issue any shares of Series A Preferred Stock, Series B Preferred Stock, or Series C Preferred Stock.

C. Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Article III, Section C.

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of this Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of this Corporation, the assets of this Corporation shall be distributed as provided in Article III, Section 2.

3. Redemption. The Common Stock is not redeemable.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any shareholders' meeting in accordance with the Bylaws of this Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

IV.

A. The liability of the directors of the Corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

B. The Corporation is authorized to provide indemnification of agents (as defined in Section 317 of the California Corporations Code, as amended, ("**Section 317**")) through bylaw provisions, agreements with the agents, vote of shareholders or disinterested directors, or otherwise, in excess of the indemnification otherwise permitted by Section 317, subject only to the limits set forth in Section 204 of the California Corporations Code with respect to actions for breach of duty to the Corporation or its shareholders. The Corporation is further authorized to provide insurance for agents as set forth in Section 317, provided that, in cases where the Corporation owns all or a portion of the shares of the company issuing the insurance policy, the company and/or the policy must meet one of the two sets of conditions set forth in Section 317.

C. Any repeal or modification of the foregoing provisions of this Article IV by the shareholders of this Corporation shall not adversely affect any right or protection of an agent of this Corporation existing at the time of such repeal or modification.

3. The foregoing Amended and Restated Articles of Incorporation has been duly approved by the Board of Directors.

4. The foregoing amendment and restatement of Amended and Restated Articles of Incorporation has been duly approved by the required vote of shareholders of the Corporation entitled to vote in accordance with Sections 902 and 903 of the California Corporations Code. The total number of outstanding shares of the Corporation is 11,383,045 shares of Common Stock, 2,661,795 shares of Series A Preferred Stock, 3,873,967 shares of Series B Preferred

Stock and 2,075,747 shares of Series C Preferred Stock. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than 50% of the outstanding shares of Common Stock, more than 50% of the outstanding shares of Series A Preferred Stock voting as a separate series, more than 50% of the outstanding shares of Series B Preferred Stock voting as a separate series, more than 50% of the outstanding shares of Series C Preferred Stock and more than 50% of the outstanding shares of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock voting together as a single class on an as converted basis.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this Certificate are true and correct of our own knowledge.

Executed in the City of San Francisco, State of California, on this 15th day of December, 2008.



Eric Klinker, President



Mitchell Edwards, Secretary